

NIH POLICY MANUAL

1135 Gifts Administration

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TABLE OF CONTENTS

- A. Purpose
- B. Background
- C. References
- D. Definitions and Acronyms
- E. Policy
 - 1. Monetary Gifts
 - 2. Nonmonetary Gifts
 - 3. Gifts of Real Property
 - 4. Gifts for the Benefit of Patients
 - 5. Receipt and Acceptance of Gifts
 - 6. Expenditure of Gift Funds
 - 7. Grants, Royalties, and Awards
 - 8. Solicitation Prohibited
 - 9. Prohibited and Non-Prohibited Sources
- F. Responsibilities
 - 1. Office of the Director, NIH
 - 2. Institutes and Centers
 - 3. Office of the General Counsel
 - 4. Office of Financial Management
 - 5. Office of Logistics and Acquisition Operations
- G. Procedures
 - 1. Monetary Gifts
 - 2. Nonmonetary Gifts
 - 3. Investment of Gift Fund Monies
 - 4. Fund Control

- 5. Official Entertainment
- 6. Official Travel

Table of Contents (continued)

- 7. Disposition of Prohibited Gifts
- H. Limitations - Gifts That May Not Be Accepted
- I. Waivers
- J. Delegations of Authority
- K. Wills and Trusts
- L. Records Retention and Disposal
- M. Management Controls

Appendix 1 - The Gift Acceptance Validity Survey

Appendix 2 - NIH Gift Pre-Acceptance Checklist

Appendix 3 - Sample Letters of Acceptance for Conditional and Unconditional Gifts

Appendix 4 - Sample Memorandum of Exception to Policy

Appendix 5 - Comptroller General Decision B-255474 dated April 3, 1995

Appendix 6 - Directory

Appendix 7 - Information Fact Sheet on Private Donations to the NIH

A. Purpose

This chapter establishes policy and procedures concerning the acceptance, acknowledgment, and administration of gifts (including bequests, devises of real property, legacies, and donations from living donors) to the National Institutes of Health (NIH) or to support any of its activities or components. This manual chapter applies to the receipt of all monetary and nonmonetary gifts.

B. Background

This information is intended as guidance by which the NIH may take full advantage of its statutory and delegated authorities to accept gifts. Compliance will enable NIH management to control efficiently the acquisition and utilization of these resources; assure that NIH employees avoid conflicts of interest and violations of laws regarding unauthorized augmentation of appropriations, supplementation of Federal salary, expenditures in excess of appropriations, and handling of miscellaneous receipts.

The NIH is authorized in five separate ways to receive funds to supplement appropriated funds, to support its research efforts under: 1) the statutory authority for the acceptance of gifts; 2) the Stevenson-Wydler Technology Innovation Act of 1980, as amended, pursuant to a Cooperative Research and Development Agreement; 3) royalties resulting from licenses and patents; 4) the acceptance of grants as conditional gifts; and 5) the statutory authority for the Foundation for the National Institutes of Health to transfer funds to NIH.

C. References

1. Comptroller General of the United States, Decisions B-198730 (September 24, 1980) and B-255474 (April 3, 1995).
2. 41 CFR Part 101- 49, as amended.
3. Sections 231 and 405(b)(1)(H) of the Public Health Service (PHS) Act, as amended

(42 U.S.C. §§238, 284(b)(1)(H)) (gift acceptance statutes).

4. Section 499 of the PHS Act, as amended (42 U.S.C. §290b) (authority establishing the Foundation for the National Institutes of Health).
5. U.S. Treasury Department Deposit Regulations, Treasury Fiscal Requirements Manual, Part 5- Deposit Regulations, Section 4020, as amended (Frequency of Deposits).
6. Memorandum from the Assistant Secretary for Health to PHS Agency Heads, "Delegation of Authority To Accept Gifts Under Title XXI of the Public Health Service Act (PHS), Miscellaneous" (July 10, 1995).
7. Memorandum from Acting Associate General Counsel for Ethics and Designated Agency Ethics Official (E. Swindell) to Deputy Secretary *et al* "Holiday Gifts, Parties, and Charitable Fundraising" (Dec. 4, 2000).
8. Memorandum from Deputy Director Management, NIH/Deputy Director for Intramural Research, NIH to OD Staff/IC Directors, "Update on Relationships with NIH and the Foundation for the National Institutes of Health (FNIH)" (January 19, 2000).
9. NIH Manual Chapter 1130, Delegations of Authority, Finance #5 "Accept Gifts Under Section 231 of the PHS Act", and Program: General #10, "National Library of Medicine".
10. NIH Manual Chapter 1130, Delegations of Authority, Finance #6 "Memorials and other Acknowledgments".
11. NIH Manual Chapter 1160-1, "Entertainment."
12. NIH Manual Chapter 2300-735-1, "Avoiding Conflicts of Interest".
13. Chapter 2300-735-4, "Outside Work and Related Activities with Outside Organizations"(02/17/98), as modified, Memorandum, Director, NIH, to IC Directors, "Changes in NIH Policies on Outside Activities" (November 3, 1995).
(See <http://www1.od.nih.gov/ohrm/issuances/735-4-outside-activ/Default.htm>)

14. NIH Manual Chapter 26101-25-2, "Personal Property Management Guide."

D. Definitions and Acronyms

1. Definitions

Conditional gift - a gift in which the donor imposes some condition or restriction on the use of the gift or as a condition to be met in order to obtain the gift. NIH is not authorized to expend conditional gift funds to support functions not encompassed within the terms of the conditions. IC Directors/Deputy Directors are responsible for accepting gifts within their statutory or delegated authority. (See **NIH Manual Chapter 1130, Finance #5, "Accept Gifts Under Section 231 of the PHS Act"**).

Gift(s) - "gratuitous conveyances or transfers of ownership in property without any consideration", 25 Comp. Gen. 637, 639 (1946). For purposes of the Department of Health and Human Services statutes authorizing acceptance of gifts, a grant to NIH may qualify as a conditional gift. In ordinary usage, "grant" means "gift", usually for a particular purpose.

IC - an NIH research institute, center, and the National Library of Medicine.

Personal property - a tangible item that is not real property, including artwork, furniture, equipment, office machines, vehicles, materials, and supplies. It excludes intangible items such as money, stocks, and bonds.

Unconditional gift - a gift in which the donor does not impose some condition or restriction on the use of the gift or as a condition to be met in order to obtain the gift. NIH is authorized to expend unconditional gift funds to support any of its authorized functions, within the scope of the intended use designated by the donor, including research on a specific disease. When a donor limits a gift to a particular IC or other NIH component or to support research on a specific disease or activity without further specification as to its purpose or manner of use, the gift is considered unconditional and may be used to carry out the mission of the recipient IC or relating to research into that specific disease or activity. IC Directors/Deputy Directors are responsible for accepting unconditional gifts within their statutory or delegated authority. (See **NIH Manual Chapter 1130, Finance #5 "Accept Gifts Under Section 231 of the PHS Act"**).

2. Acronyms

ADB = Administrative Database
CAN = Common Account Number
CC = Clinical Center
CFO = Chief Financial Officer
CFR = Code of Federal Regulations
CRADA = Cooperative Research and Development Agreement
DDM = Deputy Director for Management, NIH
DHHS = Department of Health and Human Services
DPPS = Division of Personal Property Services, OLAO
FTTA = Federal Technology Transfer Act, as amended
FY = Fiscal Year
IC = Institutes and Centers
NCI = National Cancer Institute
NIH = National Institutes of Health
OD = Office of Director, NIH
OFM = Office of Financial Management, NIH
OGC = Office of the General Counsel
OLAO = Office of Logistics and Acquisition Operations
PHS = Public Health Service
PHS Act = Public Health Service Act, as amended (42 U.S.C. § 201 et seq.)
PMIS = Property Management Information System
Secretary = Secretary of Health and Human Services
U.S.C. = United States Code

E. Policy

A gift will be considered as unconditional if it is made to or for the NIH, an IC, or any constituent part of the NIH for the benefit of all or any of these organizations, or for the carrying out of any of their functions, without further specification as to its purpose or manner of use. A gift will also be considered unconditional if limited to one or more of the general purposes of any part of the PHS Act administered by NIH or to one or more of the general purposes of any institute, agency, or component established pursuant to Title IV of the PHS Act. Examples of gifts considered unconditional include gifts limited by donors for the following purposes: "the National Institutes of Health," "the National Cancer Institute," "cancer research," without further specification.

A gift will be considered as conditional if the donor restricts its purpose to support a specific research study, project, or conference; to support activities of an NIH employee identified by name or organizational title; for specifically identified functions, such as observances, ceremonies, particular public information or health promotion campaigns, community outreach activities; or purchase of specific items or types of equipment, or other specific uses.

Examples of purposes that would be considered conditional include a gift to NIH:

1) to support a specific activity conducted by, e.g., the "Office of Research on Women's Health"; 2) to support an identified research project performed by a specific IC laboratory or extramurally; or 3) restricting the expenditure of donated funds to certain categories of expenditure, such as personnel, equipment, and supplies. Gifts to support activities of individual employees may be accepted only if the principal beneficiary of the gift is the NIH rather than the employee. For conditional monetary gifts, the potential donor must agree in writing that, upon completion of the stipulated conditions or circumstances rendering completion of the conditions impossible, any remaining funds will be transferred to the unconditional gift account for the support of any other objectives of the recipient organization. The letter of acceptance of the gift must acknowledge the donor's agreement to this condition.

If there is a question in determining whether a gift is conditional or unconditional, the assistance of the DHHS, Office of the General Counsel (OGC), should be contacted. If, in the opinion of the OGC, there is a significant question about the classification of the gift, it will be deemed conditional and letters of acceptance will be prepared for consideration of the NIH official authorized to accept the particular conditional gift in issue, under the NIH delegations of authority.

1. Monetary Gifts

It is the policy of NIH to accept all monetary gifts when they will be beneficial to NIH, subject to any limitations imposed by law, or by DHHS or NIH policies. NIH will accept monetary gifts in lieu of gifts in-kind when feasible. Thus, where a bequest or legacy is all or part of the general estate (for example, a bequest of 1/3 the rest, residue and remainder of the estate), NIH will request the executor to liquidate the assets and make distribution in cash, as authorized under the applicable probate or other law.

As set forth in **Section H** of this Chapter, gifts may not be accepted if the conditions imposed by the donor are illegal, contrary to public policy, burdensome, (such as caring for graves or memorials) unreasonable to administer, contrary to generally accepted

public standards, or would create a conflict of interest or the appearance of a conflict of interest to a reasonable person.

NOTE: A gift intended specifically for salary support may not be accepted.

2. Nonmonetary Gifts

It is the policy of NIH to accept nonmonetary gifts, except real estate, where they can be of use to NIH, subject to the same limitations imposed by paragraph 1 above. However, property may not be accepted if the total costs associated with acceptance are expected to exceed the cost of purchasing a similar item and the cost of normal care and maintenance. Any valuation of gifts is the responsibility of the donor. Normally, NIH will accept the valuation placed on a tendered gift by the donor unless the value is clearly unreasonable. Although determination of any tax consequences is a matter between the donor and the Internal Revenue Service, it is noted that under sections 170, 2055, and 2522 of the Internal Revenue Code of 1986, as amended, donations to the United States for exclusively public purposes are deductible for income, gift, and estate tax purposes.

Section 231(d) of the PHS Act authorizes the lease or hire of property accepted as gifts. Any income from lease or hire is to be transferred within 24 hours of receipt to the Office of Financial Management (OFM) for deposit as required by law. These funds will be available for expenditure toward the operation of NIH or the performance of those functions within the scope of the purpose designated by the donor.

Similarly, proceeds from the liquidation of personal property under section 231(b) are to be transferred to OFM within 24 hours after receipt for deposit with the Treasury.

Title to all personal property accepted under the gift acceptance authority vests in the Government.

3. Gifts of Real Property

Under the delegations of authority in sections 231 and 405 of the PHS Act, acceptance of gifts of real property subject to a reverter clause is reserved to the Secretary. Authority under section 231 to accept other kinds of interests in property is delegated to the Assistant Secretary for Administration and Management/OS.

4. Gifts for the Benefit of Patients

Gifts to the Clinical Center (CC) Patient Emergency Fund or otherwise intended solely for the benefit of patients in the Clinical Center will be transmitted to the Social Work Department, for acceptance and administration as authorized under the Hospital and Station Management Regulations (42 CFR Part 35, Subpart E).

5. Receipt and Acceptance of Gifts

Under federal law, funds received by or for the United States or its agencies, including gifts, must be deposited in and administered through government accounts and may not be deposited with or otherwise administered by other persons or organizations. An outside organization, such as a foundation whose mission is solely or in part to support NIH activities, may not serve as a financial intermediary for a third party in the donation of funds, equipment, supplies, or other resources to be used in support of NIH activities or employees in the performance of their official duties, such as intramural research, unless authorized by law. Currently, the only acceptable financial intermediary for third party donation of funds is the Foundation for the NIH which operates under explicit statutory authority to solicit, accept, invest, and manage third party donations to support the NIH in its mission. Other than for NIH Foundation-administered gifts, NIH policy is that the statutory gift acceptance authorities provide an adequate basis for accepting all donations, if otherwise proper, directly from the donors, while allowing NIH managers to control the administration of these gift resources. In the use of gift acceptance authority, employees and managers must determine whether acceptance of the gift would compromise or appear to compromise the integrity of the NIH or any of its employees. Authority to accept gifts is set forth in **NIH Manual Chapter 1130, Finance #5, "Accept Gifts Under Section 231 of the PHS Act"**, unless exceptions or waivers have been otherwise granted under a specific separate statutory authority.

6. Expenditure of Gift Funds

The statutory authority for the NIH to accept gifts allows substantial discretion in the expenditure of these funds. Under standards established by the Comptroller General, federal agencies are allowed maximum flexibility in the use of gift funds for the good of the agency or to further agency goals, subject only to any restrictions placed on the gift by the donor, Comptroller General Decision, B-198730 (Sept. 24, 1980). Gift funds are available for expenditure for the same purposes and in the

same manner as regularly appropriated funds and are subject to the same controls and audit as other funds. Gift funds are "no year" monies and, as such, are available until expended within any restrictions or limitations imposed by donors. Gift funds may be expended for any authorized purpose in the performance of NIH functions, and may include, when appropriate, the official entertainment of visiting scientists and other distinguished guests as prescribed in **NIH Manual Chapter 1160-1**

"Entertainment." NIH policy is that expenditures from gift funds for personal services, station support, and extramural grants and contract awards are regulated the same as expenditures of appropriated funds. Taking into account the limitations placed on the use of gift funds, the Deputy Director Management, NIH, and the IC Directors/Deputy Directors will have primary responsibility for the approval of gift fund expenditures and whether a particular expenditure is in furtherance of NIH objectives (within the OD, the Deputy Directors for the Office of Intramural Research and Office of Extramural Research respectively, also have been granted this authority). Stated conversely, the burden rests with the above-delegated officials to assure that gift fund expenditures are made to carry out NIH purposes, consistent with the purposes of the gift and in accordance with the guidelines set forth above.

7. Grants, Royalties, and Awards

The NIH may also accept "grants" as conditional gifts as proper augmentation to its appropriations and it may use its appropriated funds to cover any cost incurred in applying for these grants. The PHS gift acceptance statutes provide NIH the specific authority to supplement, or "augment," its appropriations with gifts. So long as the requirements the statutes impose on the acceptance of conditional gifts are otherwise met, and the grant funds are used in furtherance of NIH's mission, there are no objections to NIH's acceptance of these grants (**see Appendix 5**). In some situations where unsolicited grants or other types of awards are made to NIH employees for scientific or other professional purposes, it is necessary to determine whether the funds are intended for the NIH or for the employee in that person's individual capacity.

If an employee receives funds from any outside organization for the support of the costs of NIH activities, then NIH may accept the funds as a gift to the agency and, by law, deposit them to the appropriate NIH gift fund. Receipt and retention of funds by the employee may occur only if, as part of an approved outside activity, they compensate the employee for participation in that activity. Employees and managers should seek guidance as necessary from the OGC to avoid the potential for conflict of interest or other impropriety in the acceptance of funds from outside sources.

NOTE: For additional information on certain prohibitions or conflict of interest situations, see Chapter 2300-735-4 “Outside Work and Related Activities with Outside Organizations” and NIH Manual Chapter 4204/6003-1 “NIH Intramural Research Scientists as Principal Investigators on Grant Applications and Contract Proposals”.

8. Solicitation Prohibited

The OGC has concluded that, in permitting the acceptance of gifts, the Congress did not intend to authorize the DHHS to solicit funds from the private sector to augment the funds authorized by the Congress through the appropriation process. While the gift acceptance authority does give the NIH a mechanism to accept funds from outside sources, this authority does not authorize the solicitation of funds. Therefore, NIH policy prohibits employees, either directly or through another party, from requesting or suggesting donations to the NIH or any of its components of funds or other resources intended to support activities, except grant funds as authorized by the Comptroller General in Decision B-255474 (April 3, 1995). (See **Appendix 5**)

When an outside organization or individual expresses an unsolicited interest in supporting NIH activities, an employee may provide information on the authority of NIH to accept gifts and the procedures for offering and acceptance of gifts. The OGC has developed an Information Fact Sheet on Private Donations to the NIH which may be sent to potential donors (see **Appendix 7**). Where the nature of the activity is such that the employee cannot draw a clear distinction in order to inform the potential donor about the existence of a gift fund (permissible), versus an active solicitation (not permissible), the employee should seek case-by-case guidance from the OGC. This prohibition on solicitation of gifts does not preclude NIH employees from seeking outside collaboration for specific NIH activities such as a particular research project or scientific conference, as long as these activities constitute either permissible cosponsorship between the NIH and the outside entity, grants, or a collaborative research project under provisions of the FTTA.

9. Prohibited and Non-Prohibited Sources

A prohibited source is an entity that has or is seeking to obtain contractual, financial, or other business relations in the performance or nonperformance of the NIH functions. In these cases, the approving official must perform the three-step validity test described in

Appendix 1 in determining if the potential donor is a prohibited or non-prohibited source. In the case of a gift offered from a prohibited source, the official authorized to accept the gift must be especially aware of the increased probability that an actual or apparent conflict of interest may exist. Where the donor expresses, directly or indirectly, an expectation of receiving a future benefit, such as a contract award, the gift shall not be accepted. The Foundation for the NIH is not a prohibited source due to the specific statutory authorization to interact with the NIH and, among other things, transfer funds to the NIH.

F. Responsibilities

NIH officials are authorized by law or delegation of authority (**see NIH Manual Chapter 1130, Finance #5 “Accept Gifts Under Section 231 of the PHS Act”**), to accept gifts. In making decisions on acceptance of each gift, NIH authorized officials shall consider information provided in Appendices 1 and 2. The gift acceptance validity survey and gift acceptance checklist are recommended pre-assessment guides only, and not required for any clearance process. Although, for accepting gifts that pose questions about acceptability, such as donations from commercial sources, Appendices 1 and 2-must be considered in determining whether or not to accept the gift.

1. Office of the Director, NIH

The Director often receives letters containing checks designated for specific ICs, and program areas in the Office of the Director. Letters involving specific ICs or their programs will be forwarded to the appropriate IC for response. The Deputy Director for Management, is responsible for administering and managing the Gift Fund Program for all gift fund activities. The Executive Secretariat assigns these gift acceptance letters for direct reply and/or for signature by the DDM depending on the amount of the gift. The DDM will receive a copy of all letters with gift amounts of more than \$100,000 for review. Gifts with a value of more than \$2 million must be accepted by the DDM.

2. Institutes and Centers

- a. The IC Directors/Deputy Directors are responsible for accepting gifts within their statutory or delegated authority (gifts valued at not more than \$2 million), approving expenditures from gift funds, approving the amount of funds and type of investments. The Deputy Directors for Intramural and Extramural Research will receive a copy of all letters with gift amounts of more than \$100,000 from

the respective institutes/centers for reviewing purposes.

- b. IC Executive or Budget Officers are responsible for the transmittal of monies and copies of letters from donors and acceptance letters to the OFM, establishing required Common Account Numbers (CAN), and issuing allowances related to the gift funds. Budget Officers will submit to the Assistant Director for Finance/OFM a request to invest funds available in excess of those projected to be obligated under their plan, or as necessary during the year.
- c. IC Property Accountability Officers are responsible for consulting with the NIH Property Accountability Officer, Office of Logistics and Acquisition Operations/Division of Personal Property Services (DPPS) when outside organizations propose gifts of personal property, to see that the property management requirements are met, and that information on gifts is provided for in the Property Management Information System. **(See NIH Manual Chapter 26101-25-2, "Personal Property Management Guide")**
This will permit the DPPS to create a basic record of the accountable item. This notification shall include:
 - 1) Description of the item, including the manufacturer and model number; estimated value;
 - 2) Accountable IC area which will be receiving the item (custodial location code); and

Upon receipt of donated property, the IC Property Accountability Officer will submit to the NIH Property Management Officer and the IC Property Custodial Officer a copy of the document accepting the gift. The IC Property Custodial Officer and the IC Property Accountability Officer shall contact the NIH Property Accountability Officer in the DPPS to determine the appropriate data elements and method for recording the transaction in the on-line Property Management Information System. The data elements are as follows:

- Estimated value;
- Manufacturer's serial number;
- Month and year item received;
- Physical location (building and room number);
- NIH decal number assigned to the item;

3. Office of the General Counsel

The DHHS Office of the General Counsel provides guidance on legal issues in the acceptance and administration of gifts, including gift conditions, use of gift funds, and statutory authorities; negotiates with attorneys representing potential donors or donors' estates; and coordinates with the Assistant Special Counsel for Ethics on the interface of general legal issues and issues of ethics.

4. Office of Financial Management

The Assistant Director for Finance, OFM, through:

- a. The General Ledger, Reports and Reconciliation Branch, will authorize investments requested by ICs and communicate with the Department of the Treasury when to buy and sell all investment orders.
- b. CFO Activities Branch is responsible for allotting funds to the proper gift fund account and preparing status reports on a periodic basis. This Office will finalize coordination and submission of the NIH Gift Fund Plan to Congress (when required) and the issuance of Advice of Allotments.

5. Office of Logistics and Acquisition Operations

The Director, OLAO through the DPPS, will assure compliance with the limitation that "Offers of personal property may not be accepted if the total costs associated with acceptance are expected to exceed the cost of purchasing a similar item and the cost of normal care and maintenance." (Delegations of Authority, Finance 05, Citation 3. (01/02/01))

- a. Property received as a gift will be added to the NIH property records. The same degree of custody and control will be exercised over this property as is required of all other Government-owned property.
- b. As with other forms of personal property, it will be the responsibility of the DPPS, to notify OFM of changes in the status of property that should be reflected in the General Ledger.

G. Procedures

1. Monetary Gifts

- a. Within twenty workdays after initial receipt of a monetary gift, the recipient IC must determine whether to accept the gift and must notify the donor. (NOTE: This time frame may be extended in cases where the decision on acceptance of a gift is problematic (in this case, the Office of the General Counsel should be consulted) or requires negotiation with the donor. This practice should take place when either the Director, NIH, receives a gift from a donor and has forwarded the gift to the IC or when an employee receives a gift directly from a donor. In either of these scenarios, the monetary gift, normally a check, should be safeguarded (held) by either the IC Administrative Office or the OFM Travel, Fellowship Pay and Cashier Section. Within five working days following a favorable IC acceptance decision, an IC held check must be *hand-carried* (Note: off-campus IC's may deliver the checks by courier but the same time frame is to be applied) along with an acceptance letter and brief memorandum of transmittal to the OFM/CFO Activities Branch. If the check has been held in the OFM Travel, Fellowship Pay and Cashier Section, the IC must forward an acceptance letter and a brief memorandum of transmittal to the OFM/CFO Activities Branch. The letter of acceptance should say only that the gift is being deposited to the "component's appropriate gift fund account" and state the purpose for which the funds will be used. (Reference to a "Breast Cancer Gift Fund" or an "Emphysema Gift Fund," for example, is technically incorrect and, therefore, should not be used). The OFM Travel, Fellowship Pay and Cashier Section, in turn, will then deposit the money into the IC's appropriate gift fund account, "conditional" or "unconditional." Monetary gift checks more than 90 days old will not be accepted by OFM for deposit and will be returned by the recipient organization to the donor for reissuing.

Acceptances must be in writing, signed by a properly authorized official, state the purpose for which the gift will be used, and copies of the acceptance letters must be forwarded to the OFM and DDM as appropriate. (See **NIH Correspondence Handbook or Appendix 3**). If the gift is not accepted or the donor refuses to accept NIH terms, any uncashed checks tendered by the donor will be promptly returned to the donor. If the donor's check has already been cashed, OFM will draw a refund check from the Treasury.

- b. The OGC and the Executive Secretariat are available to assist in preparing acceptance letters. In the case of conditional monetary gifts, the potential donor will be asked to agree in writing to the NIH requirement that, upon the completion of the stipulated conditions, or where completion of the stipulated conditions becomes impossible, any remaining unobligated conditional funds will be transferred to the component's unconditional gift fund account for the support of any other objectives of the recipient component.
- c. Excess funds, if any, will not be returned to the donor. The letters of acceptance shall include the condition required by subsection 1.b., above, and, if not previously agreed to, must request acknowledgment of this condition by the donor. (This requirement is necessary so that NIH financial records will not become cluttered with numerous sub-accounts with small balances that cannot be spent or cleared from the accounting records.)

2. Nonmonetary Gifts

- a. Within twenty workdays after the offer of a nonmonetary gift, the recipient IC must determine whether to accept the gift and must notify the donor. Normally, for gifts other than money, the donor should be thanked and advised that the donation will be considered and that the donor will be advised later. This time frame may be extended in cases where the decision on acceptance of a gift is problematic (in that case, the OGC and the DPPS should be consulted) or requires negotiation with the donor.
- b. Generally, responsibility for the administration of nonmonetary gifts rests with the DPPS; therefore, that office must be advised of the proposed acceptance of all nonmonetary gifts.

3. Investment of Gift Fund Monies

The appropriate delegated official will determine at least annually if excess funds will not be used within a twelve-month period, usually the fiscal year (FY). If it is determined that there are excess funds and the amount of these funds is \$50,000 or more, the official will request in writing that the General Ledger, Reports and Reconciliation Branch, OFM, invest the excess funds in interest bearing obligations of the United States or as otherwise authorized by law. The official's memorandum must include the

amount of funds to be invested, the source of funds, and any recommendations regarding the Treasury bills, notes, or bonds to be purchased. OFM will provide to the ICs quarterly status sheets for all invested funds including amounts, dates of investment and maturity. Gift funds that are invested and income from these investments retain the same limitations as the original gifts. Upon liquidation of investments, the monies must be returned to the same gift fund account to be used for the benefit of the IC within the limits and restrictions of the original gift or gifts.

4. Fund Control

Gift funds will be controlled by the same type of allotment or allowance procedure used for appropriated funds. The CFO Activities Branch, OFM, will issue an Advice of Allotment reflecting the availability of funds for each IC. The IC will issue an Advice of Allowance to authorize obligation of the funds. Gifts must be used for the purpose for which they were offered and accepted. To ensure that this is done, the allowance will serve as the control. Conditional gifts will have an allowance established for each set of unique conditions. Unconditional gifts within each IC may be controlled at the allowance level as desired by the respective IC but, at a minimum, an allowance must be established to identify funds for the various programs or research for which they were offered and accepted (for example, sickle cell disease).

5. Official Entertainment

Gift funds may be expended for official entertainment purposes, so long as this is consistent with the purposes of the gift and NIH policy on entertainment. **See NIH Manual Chapter 1160-1, "Entertainment."**

6. Official Travel

Gift funds may be used to pay for necessary travel expenses, under the same regulations and procedures as for travel supported by appropriated funds for attendance at official receptions, award ceremonies, conferences, and similar events. It is acceptable to pay travel expenses for spouses or any other appropriate individual related by blood or affinity to attend award ceremonies for honorees, because these expenditures are in support of employee morale and benefit NIH in accomplishing its mission.

7. Disposition of Prohibited Gifts

NIH may authorize disposition or return of prohibited gifts at government expense. Written notification shall accompany all gift returns. Employees may use penalty mail for the limited purpose of forwarding reimbursements to donors. If a gift cannot be accepted, the following are some possible alternatives:

Return tangible items to the donor.

Subject to requisition approval, pay the donor market value (retail cost of an item or service of like quality; and where a ticket or an invitation to an event, the printed face value of the ticket or the amount suggested as a contribution or donation to gain entrance).

Destroy, share within the office, or donate to charity perishable items only, subject to approval of a supervisor or department head. When the gift is monetary, then the gift shall be forwarded to OFM Travel, Fellowship Pay and Cashier Section, for safe-keeping (holding) pending clearance and final disposition.

H. Limitations - Gifts That May Not be Accepted

1. The Secretary's Delegation of Authority states: "Offers of property shall not be accepted if the total costs associated with acceptance are expected to exceed the cost of purchasing a similar item and the cost of normal care and maintenance." (Memorandum, Secretary to Assistant Secretary for Health, "Delegations of Authority under Title V of the Public Health Service Act, Miscellaneous" (12/9/82))
2. Subsection (a) of Section 231 of the PHS Act states: ". . . no gift shall be accepted which is conditioned upon any expenditure not to be met therefrom or from the income thereof unless such expenditure has been approved by Act of Congress."
3. Gifts may not be accepted if conditions imposed by the donor are illegal, contrary to public policy, burdensome, unreasonable to administer, are contrary to generally accepted public standards, or would create a conflict of interest, or the appearance of a conflict of interest to a reasonable person, which conflict cannot be resolved satisfactorily by an ethics official.
4. Gifts may not be accepted where they are tendered for the purpose of securing

an endorsement. Donors that are commercial organizations will be advised that the acceptance of a gift does not constitute an endorsement. Nor may gifts be accepted when the donor expresses, directly or indirectly, an expectation of receiving a future benefit, such as a contract award, from NIH.

5. Conditional gifts of real property may not be accepted by NIH officials (see **Section E.3.**)
6. Gifts for Salary Support. Gifts for the purpose of supporting or supplementing a federal employee's salary may not be accepted.

I. Waivers

The granting of requests for exceptions to this policy shall be administered and approved by the office of the DDM. Letters should include a complete description of the item(s) being waived, justification or reason for the request, cost(s), other alternatives considered, time frame(s) as applicable, what will happen if an exception is not granted, and approval of the appropriate delegated official. The Gift Acceptance Validity Survey in **Appendix 1**, should be consulted as a reference when preparing a request. See **Appendix 4** for sample letter format.

J. Delegations of Authority

In order that OFM can expeditiously effect the transfer of a deposit from the suspense account to the appropriate gift fund account, it is necessary that a copy of any delegation, or, when applicable, redelegation of the IC Director/Deputy Director's authority, made pursuant to NIH Manual Chapter 1130, Delegations of Authority, Finance No. 5 "Accept Gifts Under Section 231 of the PHS Act", be provided to the General Ledger, Reports and Reconciliation Branch, OFM. OFM will validate the name of the accepting official and determine if acceptance is within the delegation of authority.

K. Wills and Trusts

Copies of wills and trusts naming NIH or an IC as beneficiary and letters of transmittal will be forwarded to the Office of the General Counsel. The receiving IC will be responsible for acknowledging receipt of the will or trust promptly and notifying OFM, CFO Activities Branch, when the estate has been settled. Since any interest NIH might receive may be contingent or subject to prior interests, or could be revoked during the life of the person making the bequest, no entry will be made in the accounts. Proceeds from either wills or trusts, either revocable or

irrevocable, will not be entered in the accounts until realized.

L. Records Retention and Disposal

All records (e-mail and non-e-mail) pertaining to this chapter must be retained and disposed of under the authority of NIH Manual 1743, "Keeping and Destroying Records, NIH Records Control Schedule, "Appendix 1, Items 1100-M-1 and 1900-F".

NIH e-mail messages (messages, including attachments, that are created on NIH computer systems or transmitted over NIH networks) that are evidence of the activities of the agency or have informational value are considered federal records. These records must be maintained in accordance with current NIH Records Management guidelines. Contact your IC Records Officer for additional information.

All e-mail messages are considered Government property, and, if requested for a legitimate Government purpose, must be provided to the requester. Employees' supervisors, NIH staff conducting official reviews or investigations, and the Office of Inspector General may request access to or copies of the e-mail messages. E-mail messages must also be provided to Congressional oversight committees if requested and are subject to Freedom of Information Act requests. Since most e-mail systems have back-up files that are retained for significant periods of time, e-mail messages and attachments are likely to be retrievable from a back-up file after they have been deleted from an individual's computer. The back-up files are subject to the same requests as the original messages.

M. Management Controls

In accordance with NIH Manual Chapter 1750 "NIH Management Control Program", the OD/Office of Financial Management will have oversight authority on all monetary gifts. OFM will monitor and record receipt of all monetary gifts through the ADB Fund Control Module which feeds into the Central Accounting System and reflects data as it appears on the PHS-114-1 "Advice of Allotment" Form for each IC. OFM will prepare corresponding financial report data on an as needed basis.

OD/OLAO/DPPS will maintain oversight authority on nonmonetary gifts of accountable personal property through periodic physical inventories and updates to the records in the PMIS and through its normal practices of management control over personal property as outlined in the Personal Property Management Guide.

APPENDIX 1: The Gift Acceptance Validity Survey

NIH must determine whether its interest in accepting a gift outweighs any concern that acceptance of the gift would reflect unfavorably upon the ability of the agency or any employee to carry out responsibilities or official duties in a fair and objective manner, or would compromise the integrity of, or the appearance of the integrity of a Government program or of any official involved in that program. This survey will help in analyzing the process. All responses answered unfavorably should be given considerable scrutiny.

1. Does the NIH have an interest in accepting the gift?
yes ____
no ____
do not know ____
2. Will this gift enhance and enable the NIH to accomplish its mission?
yes ____
no ____
do not know ____
3. Is the donor an acceptable source?
yes ____
no ____
do not know ____
4. Does the gift meet generally acceptable public standards?
yes ____
no ____
do not know ____
5. Is the gift reasonable to administer?
yes ____
no ____
do not know ____
6. Will the principal beneficiary of the gift be the NIH?
yes ____
no ____
do not know ____
7. Does the NIH control activity in which the donors have an interest or the potential for an interest, such as CRADAs, research and development or other contract programs, grant programs, or clinical trials? If so, which activities?
yes ____
no ____

NIH POLICY MANUAL

1135 - GIFTS ADMINISTRATION

Issuing Office: OFM 301-496-3368

Release Date: 12/19/01

Page 23

do not know ____

8. Will acceptance of the gift compromise the integrity of, or the appearance of the integrity of a Governmental program or of any official involved in that program?
yes ____
no ____
do not know ____
9. Is there an actual or apparent conflict of interest?
yes ____
no ____
do not know ____
10. Was the gift solicited by an NIH employee?
yes ____
no ____
do not know ____
11. Will the size or the nature of the gift alone raise a significant concern?
yes ____
no ____
do not know ____
12. Is the gift offered to support the activities of an individual employee?
yes ____
no ____
do not know ____
13. Will accepting the gift reflect unfavorably on the ability of the NIH or any employee to carry out responsibilities or official duties in a fair and objective manner?
yes ____
no ____
do not know ____
14. Is the gift being offered for endorsement purposes?
yes ____
no ____
do not know ____
15. Are there donor- imposed restrictions or conditions?
yes ____
no ____
do not know ____

16. Is there sensitivity of any matter pending before the NIH that would affect the interest of the donor? If so, what?
yes ____ Nature of the matter _____
no ____
do not know ____
17. Are there any effects of accepting the gift on entities that are inside/outside the agency or component? For example, would any identifiable class or persons or entities be benefitted or disadvantaged by the acceptance of the gift by the NIH or IC? If so, to what extent?
yes ____ Explain _____
no ____
do not know ____
18. What is the practical impact of the gift within NIH or IC?
19. Why is the gift being offered to the NIH or IC?

If your answer was "no" to any questions 1 through 7, or "yes" to any questions 8 through 17, then careful scrutiny should be given to any unfavorable responses and the Office of the General Counsel should be consulted as a precautionary measure.

Comments:

Signature

Date

APPENDIX 2: NIH Gift Pre-Acceptance Checklist

NIH Organization:

Date:

Person to Contact in Receiving Office:

Telephone:

FAX:

Monetary ___ / Nonmonetary ___

Conditional ___ / Unconditional ___

Amount of Gift: \$_____

Personal Property ___ / Real Property

Name of Donor:

Donor's Address:

Street:

City:

State:

Zip Code:

Telephone:

Point of Contact:

Description or Purpose of Gift:

Donor imposed restrictions or conditions:

Recommendation: Acceptance ___ / Nonacceptance___
Reason(s) for nonacceptance:

Comments:

Concurrence ___ / Non-concurrence ___ Date: _____

Signature of Recommending Official

Concurrence ___ / Non-concurrence ___ Date: _____

Signature of Approving Official

APPENDIX 3: Sample Letters of Acceptance for Conditional and Unconditional Gifts
(use IC letterhead if an IC Director is the signature authority)

SAMPLE LETTER OF ACCEPTANCE FOR CONDITIONAL GIFT

Marshall Dillon, Ph.D.
President Acme Laboratories
1234 56th Avenue
Metropolis, VA 23456

Dear Dr. Dillon:

On behalf of the National Institutes of Health, and by the authority delegated to me under section 231 of the Public Health Service Act, as amended (42 U.S.C. § 238), I am pleased to accept Acme Laboratories' gift of \$100,000. In accordance with your wishes, the funds will be deposited in the (Name of IC or OD component) Conditional Gift Fund Account and will be used by (Name of IC or OD component) solely to support (Name of specific project and/or researcher).

In the event that any unobligated excess funds remain in the account after completion of the project, or if completion of the project becomes impossible, any unexpended balance will be deposited in the (Name of IC or OD component) Unconditional Gift Fund and made available to support other activities of the (Name of IC or NIH). By signing and returning a copy of this letter where indicated below, you acknowledge acceptance of this condition.*

*(CAVEAT: This sentence, and the acknowledgment should be omitted if the donor has previously agreed to this in writing).

SAMPLE LETTER OF ACCEPTANCE FOR CONDITIONAL GIFTS (continued)

Support from organizations such as yours makes it possible for the National Institutes of Health to work toward understanding, preventing, and eradicating disease. We deeply appreciate your help.

Sincerely yours,

(Signature) Recipient IC Director

Use of excess funds acknowledgment:

By: _____ Date: _____

bcc:
OFM
OD, DDM
OGC

SAMPLE LETTER OF ACCEPTANCE FOR UNCONDITIONAL GIFTS

Marshall Dillon, Ph.D.
President Acme Laboratories
1234 56th Avenue
Metropolis, VA 23456

Dear Dr. Dillon:

On behalf of the National Institutes of Health, and by the authority vested in me under Section 405(b)(1)(H) of the Public Health Service Act, as amended [or, if applicable, delegated to me under section 231 of the Public Health Service Act, as amended], I am pleased to accept Acme Laboratories's generous donation of \$100,000, to the [name of IC or OD component]. In accordance with the mission of NIH, the gift will be used to carry out the mission of [name of IC or OD component] to support [purpose, e.g. cancer research].

Support from organizations such as yours makes it possible for the National Institutes of Health to work toward understanding, preventing, and eradicating disease. We deeply appreciate your help.

Sincerely yours,

(Signature) (Recipient IC Director)

bcc:

OFM

OD, DDM

OGC

APPENDIX 4: Sample Memorandum of Exception to Policy (use IC letterhead if an IC Director is the signature authority)

TO: Deputy Director for Management

FROM: Director, NCI

SUBJECT: Exception to Policy

The National Cancer Institute (NCI) is replacing one of the old antiquated laboratories in Building 29. We expect that construction will be completed in January 2002. The new site will offer the latest in cancer diagnosis and treatment technology. We are equipping the facility with a new MRI unit that will cost approximately \$5 million. Worldwide Global Medical Inc., the supplier of the MRI unit, cannot deliver the new unit because the FDA has uncovered a few latent defects, but no overall catastrophic system failures that would cause major concern. In order for the laboratory to open as scheduled, Worldwide would like to donate an older version to the laboratory, which they value at approximately \$3.5 million, pending clearance from FDA of the new unit. They are willing to give the gift on the condition that NCI will follow through with the purchase and installation of the new unit upon FDA clearance. The attached is a letter of the proposed gift detailing the conditions.

Justification: It is in the interest of NIH to accept the gift, because it ensures the opening of the laboratory as scheduled. Without the gift, NCI must delay the opening, backtrack on proposed services, and possibly abandon the project until we can compete a new source, all of which are unacceptable. Rental is not an option because of associated construction requirements for the unit to be fixed to the lab structure. The new laboratory, as designed, can support both units without major renovations to the present layout and is more cost efficient in the long haul. The advantages of having a backup unit on the site are numerous. This is an opportunity for NCI to expand research in areas not forecasted previously.

I recommend that you approve this exception to the policy because it coincides with the mission of the NCI.

IC DIRECTOR

Attachment

GIFTS ADMINISTRATION

Comptroller General Decision B-255474 dated April 3, 1995



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Department of Health and Human Services - Public Health Service Gift Acceptance Statute as Authority for Application for Grant Funds

File: B-255474

Date: April 3, 1995

DIGEST

Because the National Institutes of Health, pursuant to 42 U.S.C. § 300aaa(a), may accept grants as conditional gifts, it may use its appropriated funds to cover any cost incurred in applying for such grants.

DECISION

The Department of Health and Human Services (HHS) has requested our opinion on whether, pursuant to the Public Health Service's (PHS) gift acceptance statute, 42 U.S.C. § 300aaa(a), the National Institutes of Health (NIH), a component of PHS, may use its appropriated funds to apply for grants from non-government sources. The grant funds would be used to support scientific research in furtherance of NIH's mission. For reasons set forth below, we conclude that NIH may use its appropriations to cover costs incurred in applying for grants.

HHS's request raises, in effect, two questions: (1) would NIH's acceptance of grant funds constitute an improper augmentation of its appropriations? and (2) if NIH may accept grant funds, may it use its appropriated funds to apply for grants?

As a general rule, an agency may not augment its appropriations from outside sources without specific statutory authority. 36 Comp. Gen. 268, 269 (1956). The PHS gift acceptance statute cited by HHS provides NIH the specific authority to supplement, or "augment", its appropriations with gifts. 42 U.S.C. § 300aaa(a). The PHS gift acceptance statute reads, in part, as follows:

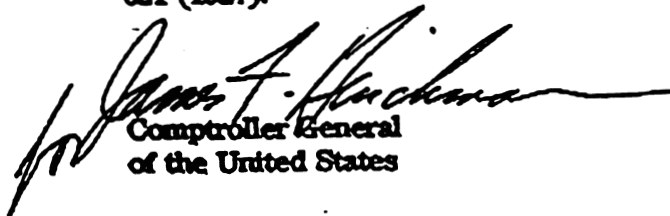
GIFTS ADMINISTRATION

Comptroller General Decision B-255474 dated April 3, 1995

"The Secretary of Health and Human Services is authorized to accept on behalf of the United States gifts made unconditionally by will or otherwise for the benefit of the Service or for the carrying out of any of its functions. Conditional gifts may be so accepted if recommended by the Surgeon General, and the principal of and income from any such conditional gift shall be held, invested, reinvested, and used in accordance with its conditions, but no gift shall be accepted which is conditioned upon any expenditure not to be met therefrom or from the income thereof unless such expenditure has been approved by an Act of Congress."

Consequently, NIH may accept grant funds only if a grant constitutes a gift under the PHS gift acceptance statute. Although we have viewed grants in other contexts as sharing certain aspects of contractual undertakings, *see, e.g.,* 42 Comp. Gen. 289 (1962), for purposes of the PHS statute, we think that grants will typically qualify as conditional gifts. In ordinary usage, "grant" means "a gift, usually for a particular purpose." Webster's New International Dictionary 989 (3d ed. 1966). *See also* Black's Law Dictionary 699 (6th ed. 1990) ("to bestow or confer . . . a gift"). So long as the requirements the statute imposes on the acceptance of conditional gifts are otherwise met, and so long as the grant funds are used in furtherance of NIH's mission, we have no objection to NIH's acceptance of grants.

NIH appropriations may be used to apply for grants to further NIH's mission. Grants are often awarded competitively, with the grantor requiring potential grantees to apply for and justify their grant requests. If the Surgeon General determines that particular grants will facilitate the accomplishment of NIH's mission, NIH may consider the costs incurred in the preparation of the grant application a necessary expense of NIH's appropriations. *See* 6 Comp. Gen. 619, 621 (1927).


Comptroller General
of the United States

NIH POLICY MANUAL

Page 32

1135 - GIFTS ADMINISTRATION

Issuing Office: OFM 301-496-3368

Release Date: 12/19/01

APPENDIX 5: Comptroller General Decision B-255474 dated April 3, 1995.

APPENDIX 6: Directory

Clinical Center
Social Work Department
Building 10, Room 1C121B
496-9318

Deputy Director for Management
Building 1, Room 103
496-3271

Deputy Director for Intramural Research
Building 1, Room 114
496-1921

Deputy Director for Extramural Research
Building 1, Room 114
496-1096

Office of the General Counsel
Building 31, Room 2B50
496-6043

Office of Financial Management
General Ledger, Reports and Reconciliation Branch
Building 31, Room B1B47
496-3163

Office of Financial Management
CFO Activities Branch
Building 31, Room B1C23
496-6115

Office of Logistics and Acquisitions Operations
Division of Personal Property Services
6011 Executive Blvd. Rm. 637
496-4548

APPENDIX 7: INFORMATION FACT SHEET ON PRIVATE DONATIONS TO THE NIH

Donations to NIH

Except for applications for grants from private nongovernment sources, such as foundations, as authorized by the Comptroller General in the Decision B-255474 (April 3, 1995), employees are not authorized to request or suggest donations to the NIH. When an outside organization or private individual expresses an unsolicited interest in supporting NIH activities, the employee may provide information on the authority of NIH to accept gifts. Below is a suggested information fact sheet regarding that authority.

INFORMATION FACT SHEET ON PRIVATE DONATIONS TO THE NATIONAL INSTITUTES OF HEALTH

The National Institutes of Health (NIH) may accept gifts and bequests of money or personal property for the purpose of carrying out its activities pursuant to sections 231 and 405 of the Public Health Service Act, as amended. Gifts must be entirely voluntary.

Gifts may be unconditional, for example, “to the National Institutes of Health” or “to the Fogarty International Center to promote international health”; or conditional, for example, “to the NIH Office of Research on Women's Health to support [a particular study]”. For bequests, it is advisable to include a reference to the location, *i.e.*, “located in Bethesda, Maryland”. NIH is not a private charitable organization, but, as an agency of the United States, gifts made to NIH as a whole or to any of its research institutes or other components without limitation or for any of their public purposes, are tax deductible as charitable contributions under section 170(c) of the Internal Revenue Code of 1986, as amended (Internal Revenue Code). Potential donors should, however, consult with their tax advisors.

The decision whether or not to accept any gift is a discretionary administrative decision, based upon program needs and public policy considerations. Most gifts are accepted when they will be beneficial to NIH, so long as any conditions of the gift are not illegal, contrary to public policy, or burdensome, and the gift will not create a real or apparent conflict of interest, as could occur when a gift is offered by a organization with which NIH has financial dealings. For additional information on receipt and acceptance of gifts, please contact the administrative office of the particular NIH institute or other component that is the intended recipient of the gift (the NIH operator at (301) 496-4000 can provide the appropriate telephone number), the NIH Deputy Director for Management at (301) 496-3271, or

1135 - GIFTS ADMINISTRATION

Issuing Office: OFM 301-496-3368

Release Date: 12/19/01

the NIH Legal Advisor at (301) 496-4108.

Additionally, Congress established the Foundation for the National Institutes of Health to solicit, accept, invest, and manage gifts to support the mission of the NIH. The Foundation for the NIH is a tax exempt nonprofit corporation under section 501(c)(3) of the Internal Revenue Code, and gifts to the Foundation for the NIH are tax deductible. For further information, please contact the Foundation at (301) 402-5311 or www.fnih.org.

NIH POLICY MANUAL
1135 - GIFTS ADMINISTRATION
Issuing Office: OFM 301-496-3368
Release Date: 12/19/01

Page 36